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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 (SAN FRANCISCO DIVISION)

21 IN RE: CATHODE RAY TUBE (CRT)
22 ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

23 This Document Relates to:

24 *Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al.,*
25 Case No. 3:11-cv-05513

26 *Best Buy Co., Inc., et al. v. Technicolor SA, et*
27 *al., Case No. 13-cv-05264*

28 *Alfred H. Siegel, as Trustee of the Circuit City*
Stores, Inc. Liquidating Trust v. Hitachi, Ltd., et
al., Case No. 3:11-cv-05502

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFFS' UMBRELLA
DAMAGES**

**ORAL ARGUMENT
REQUESTED**

Date: February 6, 2015

Time: 10:00 a.m.

Before: Hon. Samuel Conti

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' UMBRELLA DAMAGES
Case No. 07-5944 SC, MDL No. 1917

1
2 *Alfred H. Siegel, as Trustee of the Circuit city*
3 *Stores, Inc. Liquidating Trust v. Technicolor*
4 *SA, et al.*, Case No. 13-cv-05261

5 *CompuCom Systems, Inc. v. Hitachi, Ltd., et al.*,
6 Case No. 3:11-cv-06396

7 *Costco Wholesale Corp. v. Hitachi, Ltd., et al.*,
8 Case No. 3:11-cv-06397

9 *Costco Wholesale Corp. v. Technicolor SA*,
10 Case No. 13-cv-05723

11 *Electrograph Systems, Inc., et al. v. Hitachi,*
12 *Ltd., et al.*, Case No. 3:11-cv-01656

13 *Electrograph Systems, Inc., et al. v. Technicolor*
14 *SA, et al.*, Case No. 3:13-cv-05724

15 *Interbond Corp. of America v. Hitachi, Ltd., et*
16 *al.*, Case No. 3:11-cv-06275

17 *Interbond Corp. of America v. Technicolor SA,*
18 *et al.*, Case No. 3:13-cv-05727

19 *Office Depot, Inc. v. Hitachi, Ltd., et al.*, Case
20 No. 3:11-cv-06276

21 *Office Depot, Inc. v. Technicolor SA, et al.*,
22 Case No. 3:13-cv-05726

23 *P.C. Richard & Son Long Island Corp., et al. v.*
24 *Hitachi, Ltd., et al.*, Case No. 3:12-cv-02648

25 *P.C. Richard & Son Long Island Corp., et al. v.*
26 *Technicolor SA, et al.*, Case No. 3:13-cv-05725

27 *Sears, Roebuck & Co. and Kmart Corp. v.*
28 *Chunghwa Picture Tubes, Ltd., et al.*, Case No.
3:11-cv-05514

Sears, Roebuck & Co. and Kmart Corp. v.
Technicolor SA, et al., Case No. 13-cv-05262

1 *Target Corp. v. Chunghwa Picture Tubes, Ltd.,*
2 *et al.*, Case No. 3:11-cv-05514

3 *Target Corp. v. Technicolor SA, et al.*, Case No.
4 3:13-cv-05686

5 *Tech Data Corp., et al. v. Hitachi, Ltd., et al.*,
6 Case No. 3:13-cv-00157

7 *Schultze Agency Services, LLC on behalf of*
8 *Tweeter Oopco, LLC and Tweeter Newco, LLC*
9 *v. Hitachi, Ltd., et al.*, Case No. 3:12-cv-02649

10 *Schultze Agency Services, LLC on behalf of*
11 *Tweeter Oopco, LLC and Tweeter Newco, LLC*
12 *v. Technicolor SA, et al.*, Case No. 3:13-cv-
13 05668

14 *ViewSonic Corp. v. Chunghwa Pictures Tubes,*
15 *Ltd., et al.*, Case No. 3:14-cv-02510

16 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 6, 2015, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 1, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable Samuel Conti, the undersigned Defendants will and hereby do move the Court for an order granting summary judgment in favor of Defendants and dismissing with prejudice all damages claims based on the “umbrella” theory of recovery in the above-captioned actions. For the reasons explained in the accompanying Memorandum of Points and Authorities, the plaintiffs in the above-captioned actions are prohibited from seeking damages under federal and state law pursuant to the “umbrella” theory of recovery where their purchases involve CRTs that were not manufactured by the alleged conspirators.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the declaration of Lucius B. Lau and accompanying exhibits, the complete files and records in this action, oral argument of counsel, authorities that may be presented at or before the hearing, and such other and further matters as this Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE ISSUE

1. Whether the Court should grant summary judgment in favor of Defendants on damages claimed by the Direct Action Plaintiffs (“DAP”) based on the “umbrella” theory of recovery, where these plaintiffs seek to recover damages for purchases of products containing CRTs that are not even alleged to be price-fixed.

II. INTRODUCTION

The DAPs allege that certain CRT manufacturers conspired with each other to fix prices of CRTs that were incorporated into monitors and televisions and later purchased by the DAPs. The DAPs seek damages associated with these purchases. But the DAPs also seek damages for their purchases of monitors and televisions containing CRTs (“CRT Products”) that were *not* manufactured by the alleged conspirators and are not even alleged to be price-fixed. With respect to this latter category of damages, the DAPs seek to recover based on the “umbrella” theory of liability. The “umbrella” theory is a consequential damages theory that seeks to hold price-fixers liable for harm allegedly flowing from illegal conduct (e.g., higher market prices charged by competitors who are not alleged to be conspirators), even though the price-fixing defendants were not involved in their competitors’ pricing decisions and received no benefit from their competitors’ pricing decisions. Such “umbrella” claims are barred in the Ninth Circuit. *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1338-39 (9th Cir. 1982), *cert. denied*, 464 U.S. 1068 (1984). The state laws under which the DAPs bring suit have been harmonized with federal law, compelling the rejection of the DAPs’ umbrella damages claims under state law as well. Accordingly, the Court should grant summary judgment and prohibit the DAPs from pursuing their “umbrella” damages claims.

III. FACTUAL BACKGROUND

The DAPs purchased products containing CRTs that they allege were subject to a price-fixing conspiracy carried out by specified CRT manufacturers. In addition to pursuing claims under federal law, certain DAPs assert claims under the laws of Arizona, California,

1 Florida, Illinois, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New
2 York, North Carolina and Wisconsin. Declaration of Lucius B. Lau, dated November 7,
3 2014 ("Lau Decl."), Ex. A.

4 Dr. Alan S. Frankel is the damages expert proffered by the Best Buy, Circuit City,
5 CompuCom, Costco, Electrograph, Interbond, Office Depot, P.C. Richard, Sears, Kmart,
6 Target, Tech Data, Tweeter and ViewSonic Plaintiffs. In his expert reports for these DAPs,
7 Dr. Frankel calculates damages in two ways. In one method, [REDACTED]

8 [REDACTED] *See, e.g.,*
9 Lau Decl., Ex. B ¶¶ 33, 42. In the other method, [REDACTED]

10 [REDACTED]
11 [REDACTED] *Id.* Dr. Frankel contends that [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] Lau Decl., Ex. B ¶ 42. He then [REDACTED]

16 [REDACTED]
17 [REDACTED] *See, e.g.,* Lau Decl., Ex. B at Ex. 20.

18 The DAPs have also proffered Dr. James T. McClave as an expert who calculated
19 alleged overcharges on Defendants' CRT sales during the relevant time period. As Dr.
20 McClave explained in his report, [REDACTED]

21 [REDACTED] Lau Decl., Ex. C at 5, 7 ([REDACTED]

22 [REDACTED]
23 [REDACTED]). In calculating damages, Dr. Frankel simply [REDACTED]

24 [REDACTED]
25 Lau Del., Ex. B ¶¶ 7, 9.

26 **IV. STANDARD OF REVIEW**

27 A court "shall" grant summary judgment "if the movant shows that there is no genuine
28 dispute as to any material fact and the movant is entitled to judgment as a matter of law."

1 Fed. R. Civ. P. 56(a). “Summary judgment should be granted if the evidence would require a
2 directed verdict for the moving party.” *Kinetic Systems, Inc. v. Federal Financing Bank*,
3 No. 12-cv-01619-SC, 2014 WL 3964952, at *3 (N.D. Cal. Aug. 13, 2014) (Conti, J.) (citing
4 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986)). “The mere existence of a
5 scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be
6 evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S.
7 at 252.

8 **V. ARGUMENT**

9 The Court should grant this motion and issue summary judgment in favor of the
10 Defendants because the DAPs seek to recover based on an “umbrella” theory of liability that
11 is barred under Ninth Circuit law.

12 **A. The DAPs May Not Recover “Umbrella” Damages For Their Federal** 13 **Claims**

14 The Ninth Circuit has already considered and rejected the same type of “umbrella”
15 damages claims that the DAPs bring here. As that court noted, the umbrella theory is
16 premised on establishing that a purported conspiracy creates a “price umbrella” that permits
17 non-conspiring entities to raise their prices “to an artificial level at or near the fixed price.”
18 *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335,
19 1338-39 (9th Cir. 1982), *cert. denied*, 464 U.S. 1068 (1984). Assuming that this price
20 umbrella is established, the theory then contends that plaintiffs can recover on their purchases
21 of the non-conspiring entities’ products because the conspirators were responsible for
22 creating a market in which the non-conspirators could raise their prices. *Id.* at 1339. In
23 essence, the “umbrella” theory seeks to hold defendants liable for their competitors’ sales
24 even though defendants “received none of the illegal gains and were uninvolved in their
25 competitors’ pricing decisions.” *Id.*

26 Due to the impermissible risk of double recovery and the “unacceptably speculative and
27 complex” proof that would be required to establish umbrella damages, the Ninth Circuit in
28 *Petroleum Products* affirmed the district court’s dismissal of the plaintiffs’ “umbrella”

1 claims. *Id.* at 1340-41. The Ninth Circuit held that the initial task of proving that the non-
 2 conspirators' prices were raised due to the conspiracy rather than from "numerous other
 3 pricing considerations would be speculative." *Id.* at 1341. It then found that "the obstacles
 4 to intelligent inquiry become nearly insurmountable" in the context of a multi-tiered
 5 distribution system:

6 The causal effect of each pricing decision would have to be
 7 pursued through the chain of distribution. Not only would we be
 8 required to speculate that plaintiffs were injured solely as the result
 9 of umbrella pricing, but also we would be required to sanction
 10 complex judicial inquiry into the pricing decisions of sellers
 11 remote from plaintiffs. We decline to do either

12 *Id.* Given such "insurmountable" problems of proof, the court held that plaintiffs could not
 13 recover "umbrella" damages. *Id.*; see also *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d
 14 1152, 1155 (N.D. Cal. 2001) (holding that class members that purchased from non-
 15 conspirator Cargill "have not suffered any antitrust injury in their purchases from Cargill,
 16 because Cargill has been found not to have violated the anti-trust laws," and that "the 'price
 17 umbrella' is not a legal basis for conferring standing on an antitrust plaintiff").

18 Numerous other courts have reached the same conclusion as the Ninth Circuit (and this
 19 Court) and rejected "umbrella" damages claims under federal law. See *Mid-West Paper*
 20 *Prods. Co. v. Cont'l Grp., Inc.*, 596 F.2d 573, 584-85, 587 (3d Cir. 1979) (holding that
 21 plaintiff lacked standing to recover for purchases from non-conspirators under the "umbrella"
 22 theory in a single-tiered distribution system, as even there the inquiry would require
 23 assessing the non-conspirators' pricing decisions based on costs, marketing strategies,
 24 elasticity of demand, substitutability, and time lags in adjusting pricing or output, among
 25 other factors); *In re Vitamins Antitrust Litig.*, MDL No. 1285, 2001 WL 855463, at *2-4
 26 (D.D.C. July 2, 2001) (finding that the "overwhelming majority of recent court decisions that
 27 have addressed the viability of the 'umbrella' theory . . . have rejected 'umbrella' claims,"
 28 and granting summary judgment as to plaintiffs' umbrella claims because they "are simply
 too remote to confer antitrust standing," "highly speculative," and rest on a causal connection

1 “necessarily attenuated by significant intervening factors, such as independent pricing
2 decisions of the nonconspiring suppliers”); *Antoine L. Garabet, M.D., Inc. v. Autonomous*
3 *Techs. Corp.*, 116 F. Supp. 2d 1159, 1169-70 (C.D. Cal. 2000) (granting summary judgment
4 as to “umbrella” damages claims for lack of standing).

5 **B. The DAPs May Not Recover “Umbrella” Damages For Their State**
6 **Claims**

7 The same problems of proof that require summary judgment as to the DAPs’ federal
8 “umbrella” damages claims compel rejecting their “umbrella” claims under state law as well.
9 All of the state laws at issue are harmonized with federal law; therefore, federal principles
10 necessitate dismissal of Plaintiffs’ state umbrella damages claims. Lau Decl., Ex. D. Indeed,
11 in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Judge Illston granted summary judgment
12 as to “umbrella” damages claims brought by two of the same plaintiffs in these actions —
13 Electrograph and Target — under the laws of California, Illinois, Michigan, Minnesota and
14 New York. See *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827, 2012 U.S. Dist.
15 LEXIS 182374, at *59-66 & n.8 (N.D. Cal. Dec. 26, 2012) (following the Ninth Circuit’s
16 decision in *Petroleum Products*, in part because both cases involved “a multi-layered
17 distribution chain,” “most federal courts in recent years have rejected these claims,” and
18 “Plaintiffs do not dispute that the Ninth Circuit has held, in the context of federal antitrust
19 claims, that umbrella claims are ‘unacceptably speculative and complex’”) (quoting
20 *Petroleum Products*, 691 F.2d at 1341); see also *FTC v. Mylan Labs., Inc.*, 62 F. Supp. 2d
21 25, 39, 42, 44-53 (D.D.C. 1999) (dismissing both federal and state law “umbrella” damages
22 claims because the relevant “state statutes refer to federal antitrust law for guidance,”
23 including claims under the laws of Florida, Illinois, Michigan, Minnesota, New Mexico, New
24 York, North Carolina, Washington and Wisconsin). The same result is warranted here.

1 **VI. CONCLUSION**

2 For these reasons, Defendants' motion for summary judgment should be granted and
3 the Court should bar the DAPs from asserting any damages claims based on the "umbrella"
4 theory of liability.

5 Respectfully submitted,

6 Dated: November 7, 2014

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DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' UMBRELLA DAMAGES

Case No. 07-5944 SC, MDL No. 1917

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*Attorneys for Defendant Beijing Matsushita
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CERTIFICATE OF SERVICE

On November 7, 2014, I caused a copy of “DEFENDANTS’ NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS’ UMBRELLA DAMAGES” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

/s/ Lucius B. Lau

Lucius B. Lau

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-05513

Best Buy Co., Inc., et al. v. Technicolor SA, et al., Case No. 13-cv-05264

Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. Hitachi, Ltd., et al., Case No. 3:11-cv-05502

CompuCom Systems, Inc. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-06396

Costco Wholesale Corp. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-06397

Costco Wholesale Corp. v. Technicolor SA, Case No. 13-cv-05723

Electrograph Systems, Inc., et al. v. Hitachi, Ltd., et al., Case No. 3:11-cv-01656

Electrograph Systems, Inc., et al. v. Technicolor SA, et al., Case No. 3:13-cv-05724

Interbond Corp. of America v. Hitachi, Ltd., et al., Case No. 3:11-cv-06275

Interbond Corp. of America v. Technicolor SA, et al., Case No. 3:13-cv-05727

Office Depot, Inc. v. Hitachi, Ltd., et al., Case No. 3:11-cv-06276

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFFS' UMBRELLA
DAMAGES**

[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' UMBRELLA DAMAGES
Case No. 07-5944 SC, MDL No. 1917

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

Office Depot, Inc. v. Technicolor SA, et al., Case No. 3:13-cv-05726

P.C. Richard & Son Long Island Corp., et al. v. Hitachi, Ltd., et al., Case No. 3:12-cv-02648

P.C. Richard & Son Long Island Corp., et al. v. Technicolor SA, et al., Case No. 3:13-cv-05725

Sears, Roebuck & Co. and Kmart Corp. v. Chunghwa Picture Tubes, Ltd., et al., Case No. 3:11-cv-05514

Target Corp. v. Chunghwa Picture Tubes, Ltd., et al., Case No. 3:11-cv-05514

Target Corp. v. Technicolor SA, et al., Case No. 3:13-cv-05686

Tech Data Corp., et al. v. Hitachi, Ltd., et al., Case No. 3:13-cv-00157

Schultze Agency Services, LLC on behalf of Tweeter Oopco, LLC and Tweeter Newco, LLC v. Hitachi, Ltd., et al., Case No. 3:12-cv-02649

Schultze Agency Services, LLC on behalf of Tweeter Oopco, LLC and Tweeter Newco, LLC v. Technicolor SA, et al., Case No. 3:13-cv-05668

ViewSonic Corp. v. Chunghwa Pictures Tubes, Ltd., et al., Case No. 3:14-cv-02510

1 Upon consideration of Defendants' Notice of Motion and Motion for Summary
2 Judgment on Plaintiffs' Umbrella Damages, and any responses or replies thereto, it is
3 hereby:

4 ORDERED that the motion is GRANTED; and it is further

5 ORDERED that all claims asserted by plaintiffs in the above-titled actions that are
6 based on purchases of products containing a CRT not manufactured by a defendant or
7 alleged co-conspirator are hereby dismissed with prejudice; and it is further

8 ORDERED that, to the extent that any plaintiff any the above-titled actions fails to
9 prove participation in the alleged conspiracy by a defendant or alleged co-conspirator, such
10 plaintiff is also barred from recovering for purchases of products containing a CRT
11 manufactured by such defendant or alleged co-conspirator.

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13 **IT IS SO ORDERED.**

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16 Dated: _____

17 HONORABLE SAMUEL CONTI
18 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-05513

Best Buy Co., Inc., et al. v. Technicolor SA, et al.,
Case No. 13-cv-05264

Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-05502

CompuCom Systems, Inc. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-06396

**DECLARATION OF
LUCIUS B. LAU IN SUPPORT OF
DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFFS' UMBRELLA
DAMAGES**

DECLARATION OF LUCIUS B. LAU IN SUPPORT OF DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' UMBRELLA DAMAGES
Case No. 07-5944-SC, MDL No. 1917

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

Costco Wholesale Corp. v. Hitachi, Ltd., et al.,
Case No. 3:11-cv-06397

*Electrograph Systems, Inc., et al. v. Hitachi,
Ltd., et al.*, Case No. 3:11-cv-01656

*Electrograph Systems, Inc., et al. v. Technicolor
SA, et al.*, Case No. 3:13-cv-05724

*Interbond Corp. of America v. Hitachi, Ltd., et
al.*, Case No. 3:11-cv-06275

*Interbond Corp. of America v. Technicolor SA,
et al.*, Case No. 3:13-cv-05727

Office Depot, Inc. v. Hitachi, Ltd., et al., Case
No. 3:11-cv-06276

Office Depot, Inc. v. Technicolor SA, et al.,
Case No. 3:13-cv-05726

*P.C. Richard & Son Long Island Corp., et al. v.
Hitachi, Ltd., et al.*, Case No. 3:12-cv-02648

*P.C. Richard & Son Long Island Corp., et al. v.
Technicolor SA, et al.*, Case No. 3:13-cv-05725

*Sears, Roebuck & Co. and Kmart Corp. v.
Chunghwa Picture Tubes, Ltd., et al.*, Case No.
3:11-cv-05514

*Target Corp. v. Chunghwa Picture Tubes, Ltd.,
et al.*, Case No. 3:11-cv-05514

Target Corp. v. Technicolor SA, et al., Case No.
3:13-cv-05686

Tech Data Corp., et al. v. Hitachi, Ltd., et al.,
Case No. 3:13-cv-00157

*Schultze Agency Services, LLC on behalf of
Tweeter Oopco, LLC and Tweeter Newco, LLC
v. Hitachi, Ltd., et al.*, Case No. 3:12-cv-02649

DECLARATION OF LUCIUS B. LAU IN SUPPORT OF DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' UMBRELLA DAMAGES

Case No. 07-5944-SC, MDL No. 1917

*Schultze Agency Services, LLC on behalf of
Tweeter Oopco, LLC and Tweeter Newco, LLC
v. Technicolor SA, et al.*, Case No. 3:13-cv-
05668

*ViewSonic Corp. v. Chunghwa Pictures Tubes,
Ltd., et al.*, Case No. 3:14-cv-02510

I, Lucius B. Lau, hereby declare as follows:

1. I am an attorney with the law firm of White & Case LLP, counsel for Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Consumer Products, LLC, Toshiba America Information Systems, Inc., and Toshiba America Electronic Components, Inc.

2. I submit this declaration in support of Defendants' Notice of Motion and Motion for Summary Judgment on Plaintiffs' Umbrella Damages, filed contemporaneously herewith. Except for those matters stated on information and belief, which I believe to be true, I have personal knowledge of the facts stated herein, and I could and would competently testify thereto if called as a witness.

3. Attached hereto as **Exhibit A** is a table setting forth the federal and state law claims subject to this motion in each of the relevant actions.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Report of Alan S. Frankel, Ph.D., dated April 15, 2014, and served on behalf of Plaintiffs Best Buy Co., Inc., Best Buy Purchasing, LLC, Best Buy Enterprise Services, Inc., Best Buy Stores, L.P., BestBuy.com, L.L.C., and Magnolia Hi-Fi, Inc. On information and belief, Dr. Frankel performs the same type of damages calculations, including an alternative measure of damages accounting for CRTs that were manufactured by entities not alleged to be conspirators, in his expert reports in the Circuit City, CompuCom, Costco, Electrograph, Interbond, Office Depot, P.C. Richard, Sears, Kmart, Target, Tech Data, Tweeter and ViewSonic actions.

DECLARATION OF LUCIUS B. LAU IN SUPPORT OF DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' UMBRELLA DAMAGES

Case No. 07-5944-SC, MDL No. 1917

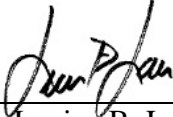
1 5. Attached hereto as **Exhibit C** is a true and correct copy of the Expert Report of
2 Dr. James T. McClave, dated April 15, 2014, and served on behalf of the Best Buy, Circuit
3 City, CompuCom, Costco, Electrograph, Interbond, Office Depot, P.C. Richard, Sears,
4 Kmart, Target, Tech Data and Tweeter Plaintiffs. On information and belief, Dr. McClave
5 performed the same overcharge calculation using Defendants' data in the ViewSonic action.

6 6. Attached hereto as **Exhibit D** is a table setting forth citations regarding the
7 harmonization of the relevant state laws with federal antitrust law.

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9 I declare under penalty of perjury under the laws of the United States of America that
10 the foregoing is true and correct.

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12 Executed this 7th day of November, 2014, in Washington, D.C.

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Lucius B. Lau

Exhibit A

Table of Remaining Claims Asserted in the Relevant Actions

Action	Citation	Claims
Best Buy	First Am. Compl. ¶¶ 236-49 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1978	Federal law State law: Minnesota
Circuit City	First Am. Compl. ¶¶ 232-38 (N.D. Cal. filed Oct. 16, 2013), ECF No. 2016	Federal law State law: none (<i>see</i> Order (N.D. Cal. Oct. 22, 2014), ECF No. 2942)
CompuCom	First Am. Compl. ¶¶ 226-55 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1975	Federal law State law: California, New York
Costco	First Am. Compl. ¶¶ 187-216 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1982	Federal law State law: Arizona, California, Florida, Illinois (Costco's claims under Washington law have been dismissed, <i>see</i> Order at 27:12-28 (N.D. Cal. Aug. 21, 2013), ECF No. 1856)
Electrograph	Second Am. Compl. ¶¶ 246-284 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1976	Federal law State law: California, New York
Interbond	First Am. Compl. ¶¶ 226-40 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1974	Federal law State law: Florida
Office Depot	First Am. Compl. ¶¶ 237-68 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1977	Federal law State law: California, Florida
P.C. Richard	P.C. Richard et al. First Am. Compl. ¶¶ 232-48 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1979	Federal law State law: Arizona, Illinois, Michigan, New York

Sears and Kmart	Second Am. Compl. ¶¶ 230-65 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1973	Federal law State law: Arizona, California, Florida, Illinois, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, Wisconsin (Sears and Kmart have agreed to dismiss their Massachusetts claims, <i>see</i> Stipulation Voluntarily Dismissing Sears and Kmart's Massachusetts Consumer Protection Act Claim (N.D. Cal. Nov. 6, 2014), ECF No. 2962)
Target	Second Am. Compl. ¶¶ 226-32 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1981	Federal law State law: none (<i>see</i> Stipulation and [Proposed] Order Dismissing with Prejudice Pls.' Claims under State Law (N.D. Cal. Nov. 6, 2014), ECF No. 2961)
Tech Data	First Am. Compl. ¶¶ 245-76 (N.D. Cal. filed Sept. 9, 2013), ECF No. 1911	Federal law State law: California, Florida
Tweeter	First Am. Compl. ¶¶ 229-35 (N.D. Cal. filed Oct. 3, 2013), ECF No. 1980 (federal law)	Federal law State law: none (<i>see</i> Order (N.D. Cal. Mar. 13, 2014), ECF No. 2436)
ViewSonic	Compl. ¶¶ 240-48 (N.D. Cal. filed May 30, 2014), Individual Dkt. No. 1	Federal law

Exhibit B

Filed Under Seal

Exhibit C

Filed Under Seal

Exhibit D

Table Regarding Harmonization of Relevant State Laws with Federal Antitrust Law

State	Actions	Citation
Arizona	Costco, P.C. Richard, Sears and Kmart	Ariz. Rev. Stat. Ann. § 44-1412
California	CompuCom, Costco, Electrograph, Office Depot, Sears and Kmart, Tech Data	<i>Vinci v. Waste Mgmt., Inc.</i> , 43 Cal. Rptr. 2d 337, 338 & n.1 (Cal. Ct. App. 1995) (applying federal standing principles to California state law claims because “the California courts look to cases construing the federal antitrust laws for guidance in interpreting the Cartwright Act”)
Florida	Costco, Interbond, Office Depot, Sears and Kmart, Tech Data	Fla. Stat. § 501.202(3)
Illinois	Costco, P.C. Richard, Sears and Kmart	<i>O'Regan v. Arbitration Forums, Inc.</i> , 121 F.3d 1060, 1066 (7th Cir. 1997) (“Federal antitrust standing rules apply under the Illinois Antitrust Act.”)
Michigan	P.C. Richard, Sears and Kmart	Mich. Comp. Laws § 445.784
Minnesota	Best Buy, Sears and Kmart	<i>Lorix v. Crompton Corp.</i> , 736 N.W.2d 619, 626, 632 (Minn. 2007) (declining to apply certain federal standing principles even though “Minnesota law is generally interpreted consistently with federal antitrust law,” but adding that standing would not exist for plaintiffs who “did not purchase, directly or indirectly, any product or service provided by or manufactured with components from [the defendants]”)
Mississippi	Sears and Kmart	<i>Futurevision Cable Sys. of Wiggins, Inc. v. Multivision Cable TV Corp.</i> , 789 F. Supp. 760, 778-80 (S.D. Miss. 1992) (dismissing Mississippi state law claims because the court concluded that plaintiff failed to allege facts sufficient to prove injury to competition with respect to its Sherman Act claims)
Nebraska	Sears and Kmart	Neb. Rev. Stat. § 59-829

Nevada	Sears and Kmart	Nev. Rev. Stat. § 598A.050
New Mexico	Sears and Kmart	N.M. Stat. Ann. §§ 57-1-15, 57-12-4
New York	CompuCom, Electrograph, P.C. Richard, Sears and Kmart	<i>Sperry v. Crompton Corp.</i> , 863 N.E.2d 1012, 1018 (N.Y. 2007) (noting that New York courts “generally construe the Donnelly Act in light of federal antitrust law,” unless state policy or differences in statutory language or legislative history justify treating them differently)
North Carolina	Sears and Kmart	<i>Microsoft Corp. v. Computer Support Servs. of Carolina, Inc.</i> , 123 F. Supp. 2d 945, 950-51, 954-55 (W.D.N.C. 2000) (dismissing federal claims because plaintiff did not have federal antitrust standing due to lack of antitrust injury, and also dismissing claims under North Carolina law because “the North Carolina Supreme Court has described the Sherman Act as ‘instructive in determining the full reach’ of the statutes”) (quoting <i>Rose v. Vulcan Materials Co.</i> , 194 S.E.2d 521, 530 (N.C. 1973))
Wisconsin	Sears and Kmart	<i>Strang v. Visa U.S.A., Inc.</i> , No. 03 CV 011323, 2005 WL 1403769, at *3-5 (Wis. Cir. Feb. 8, 2005) (applying federal standing principles and dismissing antitrust claims under Wisconsin law)